

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY BAILEY, *et al.*,
 Plaintiffs,
 vs.
 CPT. RICH SUEY, *et al.*,
 Defendants.

Case No. 2:12-cv-01954-JCM-CWH

ORDER

This matter is before the Court on non-Party Andre King-Hardiman's Motion for Reconsideration (#51), filed August 5, 2013. Hardiman requests that the Court reconsider its prior order (#46) granting Defendants' motion to strike (#41).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994). Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- (6) any other reason justifying relief from the operation of the judgment.

1 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
2 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a
3 party must set forth facts or law of a strongly convincing nature to induce the court to reverse its
4 prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal.
5 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of
6 the Federal Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall
7 be filed no later than 28 days after entry of the judgment." Furthermore, a motion under Fed. R.
8 Civ. P. 59(e) "should not be granted, absent highly unusual circumstances, unless the district court
9 is presented with newly discovered evidence, committed clear error, or if there is an intervening
10 change in the controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting*
11 *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999).

12 The Court may also exercise its inherent power to revise, correct, and alter interlocutory
13 orders at any time prior to entry of a final judgment. *See Sch. Dist. No. 5 v. Lundgren*, 259 F.2d
14 101, 105 (9th Cir. 1958); *Santamarina v. Sears, Roebuck & Co.*, 466 F.3d 570, 571-72 (7th Cir.
15 2006). This authority is governed by the doctrine that a court will generally not reexamine an issue
16 previously decided by the same or higher court in the same case. *Lucas Auto. Eng'g, Inc. v.*
17 *Bridgestone/Firestone, Inc.*, 275 F.3d 762, 766 (9th Cir. 2001); *United States v. Cuddy*, 147 F.3d
18 1111, 1114 (9th Cir. 1998). However, a court has discretion to depart from the prior order when
19 (1) the first decision was clearly erroneous, (2) there has been an intervening change of law, (3) the
20 evidence on remand is substantially different, (4) other changed circumstances exist, or (5) a
21 manifest injustice would otherwise result. *Cuddy*, 147 F.3d at 1114. A motion for reconsideration
22 is properly denied when the movant fails to establish any reason justifying relief. *Backlund v.*
23 *Barnhart*, 778 F.2d 1386, 1388 (9th Cir.1985). A motion for reconsideration should not merely
24 present arguments previously raised; that is, a motion for reconsideration is not a vehicle permitting
25 the unsuccessful party to reiterate arguments previously presented. *See Merozoite v. Thorp*, 52 F.3d
26 252, 255 (9th Cir.1995); *Khan v. Fasano*, 194 F.Supp.2d 1134, 1136 (S.D.Cal.2001) ("A party
27 cannot have relief under this rule merely because he or she is unhappy with the judgment.").

28 Here, King-Hardiman claims the prior order (#46) was clearly erroneous because he suffers


1 from the same allegedly unconstitutional prison conditions as the Plaintiff in this case and has an
2 interest in this case. As noted in the prior order, this is not a class action. Indeed, the motion for
3 class certification was denied. *See* Order (#40). Contrary to King-Hardiman's position, he has not
4 been denied access to the court or precluded from raising his claims. He has simply been precluded
5 from joining this case. As stated in the prior order (#46), if King-Hardiman wishes to file suit
6 based on the inadequacy of conditions related to his confinement, he must do so separately and in
7 full compliance with applicable statutes and rules.

8 Based on the foregoing and good cause appearing therefore,

9 **IT IS HEREBY ORDERED** that non-Party Andre King-Hardiman's Motion for
10 Reconsideration (#51) is **denied**.

11 DATED: August 7, 2013.

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C.W. Hoffman, Jr.
United States Magistrate Judge